



A36-WP/294
LE/12
21/9/07

ASSEMBLY — 36TH SESSION

LEGAL COMMISSION

DRAFT TEXT FOR THE GENERAL SECTION OF THE LEGAL COMMISSION'S REPORT AND ON AGENDA ITEMS 7 AND 8

The attached material on the General Section and Agenda Items 7 and 8 is submitted for consideration by the Legal Commission.

REPORT OF THE LEGAL COMMISSION

General

1. The Legal Commission held three meetings between 18 to 28 September 2007. Ms. S.H. Tan (Singapore) was elected by the Plenary as Chairperson of the Commission.
2. At its first meeting, the Commission elected Mr. S.M. Gaiya (Nigeria) and Mr. A.H. Mutti (Argentina) as its First and Second Vice-Chairmen respectively.
3. The three meetings of the Commission were held in open session. On the recommendation of the Executive Committee, the Assembly had agreed to the suspension of minutes for the meetings of the Legal Commission during A36.
4. Representatives from 79 Contracting States and 6 observer delegations attended one or more meetings of the Commission.
5. The Secretary of the Commission was Mr. D. Wibaux, Director of the Legal Bureau. Mr. S.A. Espínola, Principal Legal Officer, acted as his Deputy. The Assistant Secretaries were Mr. J.V. Augustin, Senior Legal Officer, Messrs. B. Verhaegen, J. Huang and A. Jakob, Legal Officers, and Mrs. M. Weinstein, Legal Adviser.

Agenda and Working Arrangements

6. Agenda items 7, 8, 45, 46, 47 and 48 referred to the Commission by the Plenary were considered, as follows:

Item 7: Annual Reports of the Council to the Assembly for 2004, 2005 and 2006

Item 8: Programme Budget for 2008, 2009 and 2010

Item 45: Progress report on compensation for damage caused by aircraft to third parties arising from acts of unlawful interference or from general risks

Item 46: Acts or offences of concern to the international aviation community and not covered by existing air law instruments

Item 47: Work Programme of the Organization in the legal field

Item 48: Assembly resolutions to be consolidated or to be declared no longer in force.

- 6.1 The documents and working papers considered by the Commission are listed by agenda items in the Appendix to the Report.

- 6.2 The action by the Commission in respect of each item is reported on separately in the paragraphs which follow. The material is arranged according to the numerical sequence of the agenda items considered by the Commission.

Agenda Item 7: Annual Reports of the Council to the Assembly for 2004, 2005 and 2006

7.1 The Commission had for consideration Chapter 6 (Constitutional and Legal Questions) of the Annual Reports of the Council to the Assembly for the years 2004 (Doc 9851), 2005 (Doc 9862) and 2006 (Doc 9876), as well as the Supplement for the first half of the year 2007 (Doc 9876 – Supplement), which had been referred to it by the Plenary.

7.2 One delegation referred to the Supplement (Doc 9876) and expressed its support to the 2001 *Convention on International Interests in Mobile Equipment* and the Protocol thereto on Matters specific to Aircraft Equipment (in force on 1 March 2006). Its State had signed the Convention and the Protocol and is working with its Provinces to ensure the due implementation of those Cape Town instruments. The delegation noted with satisfaction that the ICAO Council assumed its role as Supervisory Authority of the International Registry, and was equally pleased that the Registrar was responding very positively to the need for a user-friendly system which indeed facilitated implementation efforts. It was further satisfied with the fact that the Regulations and Procedures for the Registry had been made available in all ICAO languages.

7.3 However, the same delegation wished to share its concerns in respect of two matters. Firstly, it considered essential that the afore-mentioned Regulations and Procedures extend the use of all ICAO languages to the Registry, which should facilitate accessibility thereto. Secondly, it considered that the Registrar was still not able to meet the requirements of the Cape Town Convention and Protocol in terms of insurance coverage, although it had increased its insurance coverage to U.S.\$ 35 Million. This delegation was of the view that it was still far from the due level estimated at U.S.\$ 200 Million. Accordingly, this delegation, while offering its unfailing support to the implementation of the Cape Town instruments, wished to see serious movements on both the language and insurance fronts.

7.4 Another delegation, which supported the previous delegation, further emphasized the need to assist developing States in facilitating their access to the Registry. It also enquired whether ICAO was involved in the development of additional protocols to the Cape Town Convention, i.e. for railway rolling stock and space assets. The Secretary explained that, while the Cape Town instruments had been developed and adopted under the joint auspices of ICAO and UNIDROIT, the said additional protocols were developed under the auspices of UNIDROIT, not involving ICAO. He also informed that another diplomatic conference had recently adopted the protocol on railway rolling stock.

7.5 In summarizing the discussion, the Chairperson concluded that the Commission had *noted* Chapter 6 of the Annual Reports for 2004, 2005 and 2006 (including the Supplement thereto) and that the above concerns should be conveyed in its report.

Agenda Item 8: Programme Budget for 2008, 2009 and 2010

8.1 The Commission had for consideration the Programme Budget – Rule of Law – for 2008, 2009 and 2010 as proposed in A36-WP/23. Recalling that the ICAO Council had agreed to act as the Supervisory Authority of the International Registry established under the Cape Town Convention and Protocol on a cost-recovery basis, one delegation enquired about the lack of an indication of ICAO's anticipated costs and revenues in this respect. The principle of transparency was invoked.

8.2 The Deputy Secretary explained that it was not customary to include this type of information in the Regular Budget but that an accounting is available separately and will be provided to the States that were Parties to the Cape Town instruments in the periodic reports of the Supervisory Authority. The delegation then expressed the view that ICAO Contracting States had an interest in such matters and, without calling for a change to the current draft budget, it would be useful if future budgets could account for these anticipated costs and revenues.

8.3 In summarizing the discussion, the Chairperson concluded that the Commission had **noted** the Programme Budget and that the above comments should be conveyed in its report.